

FIRST REGULAR SESSION

HOUSE BILL NO. 1240

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ANDERSON.

2393H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 160, RSMo, by adding thereto sixteen new sections relating to protecting the privacy of student data, with penalty provisions and an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 160, RSMo, is amended by adding thereto sixteen new sections, to
2 be known as sections 160.1500, 160.1503, 160.1506, 160.1509, 160.1512, 160.1515, 160.1518,
3 160.1521, 160.1524, 160.1527, 160.1530, 160.1533, 160.1536, 160.1539, 160.1542, and
4 160.1545, to read as follows:

**160.1500. 1. It is the law of the state of Missouri under article I, section 15 of the
2 Constitution of Missouri, that the people shall be secure in their electronic communications
3 and data from unreasonable searches and seizures and that no warrant to access any
4 electronic data or communication shall issue without describing the data or communication
5 to be accessed as nearly as may be, nor without probable cause, supported by written oath
6 or affirmation. As used in sections 160.1500 to 160.1545, the following terms mean:**

7 **(1) "Affective computing", systems and devices that can or attempt to recognize,
8 interpret, process, or simulate aspects of human feelings or emotions;**

9 **(2) "Biometric record", a record of one or more measurable biological or
10 behavioral characteristics that can be used for automated recognition of an individual,
11 including fingerprints, retina and iris patterns, voice prints, DNA sequence, newborn
12 screening information, facial characteristics, and handwriting;**

13 **(3) "Cloud computing service", a service that enables on-demand network access
14 to a shared pool of configurable computing resources including, but not limited to,
15 networks, servers, storage, applications, and services to provide a student, teacher, or staff**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 member account-based productivity applications including, but not limited to, email,
17 document storage and document editing that can be rapidly provisioned and released with
18 minimal management effort or cloud-computing service-provider interaction. A cloud
19 computing service has the characteristics of on-demand self-service, broad network access,
20 resource pooling, rapid elasticity, and measured service;

21 (4) "Cloud computing service provider", an entity, other than an education
22 institution, that operates a cloud computing service;

23 (5) "Department", the department of elementary and secondary education;

24 (6) "Education institution" or "institution", any school district, charter school,
25 private school, community college, or public or private institution of higher education;

26 (7) "Education program", a program of instruction administered by an education
27 institution within this state;

28 (8) "Interpersonal resources" or "interpersonal skills", noncognitive, emotional,
29 and psychological or behavioral characteristics, attributes, and skills used to manage
30 relationships and interactions among or between individuals;

31 (9) "Intrapersonal resources" or "intrapersonal skills", noncognitive, emotional,
32 and psychological or behavioral characteristics and attributes used to manage emotions
33 and attitudes within an individual;

34 (10) "Parent", includes a student's parent or legal guardian;

35 (11) "Predictive modeling", the use of educational data-mining methods to make
36 predictions about future behaviors or performance;

37 (12) "Process" or "processing", to use, access, manipulate, scan, modify, transform,
38 disclose, store, transmit, transfer, retain, aggregate, or dispose of student or teacher data;

39 (13) "Psychological resources", noncognitive and emotional characteristics,
40 attributes, and skills, including mindsets, learning strategies, and effortful control, used
41 by an individual to address or manage various life situations;

42 (14) "State agency" or "state agencies", the department of elementary and
43 secondary education, the department of higher education, the state board of education, the
44 P-20 council, the coordinating board for early childhood, the coordinating board for higher
45 education, companion student-finance agencies, any regional education service agency, or
46 any other state education entity;

47 (15) "Student database", the Missouri student information system (MOSIS), as well
48 as any other data system or data warehouse containing student information, including
49 regional, interstate, or federal data warehouse organizations under contract to or with a
50 memorandum of understanding with the department of elementary and secondary
51 education;

52 (16) "Track", to collect and maintain records of a student's activities once the
53 student exits the education system including, but not limited to, the student's entrance into
54 and progression through the workforce or the military;

55 (17) "Workforce information", information related to unemployment insurance,
56 wage records, unemployment insurance benefit claims, or employment and earnings data
57 from workforce data sources, such as state wage records, a wage record interchange
58 system, or the federal employment data exchange system;

59 (18) "Written consent", written consent given within six months before the data
60 collection or disclosure consented to, specifically referencing that data collection or
61 disclosure, and dated and signed on the same day.

62 2. As used in sections 160.1500 to 160.1545, the following terms have the same
63 meaning as defined in 34 CFR 99.3:

64 (1) "Disclosure";

65 (2) "Education records";

66 (3) "Eligible student";

67 (4) "Parent";

68 (5) "Party";

69 (6) "Personally identifiable information";

70 (7) "Record"; and

71 (8) "Student".

 160.1503. 1. Student data collected by any state agency without the written consent
2 of parents for any student under the age of eighteen or eligible students shall be limited to
3 the following:

4 (1) The student's identification number for the Missouri student information
5 system;

6 (2) Assessment results of the statewide assessment system;

7 (3) Course taking and completion, credits earned, course grades, grade point
8 average, date of birth, grade level, and expected graduation date and graduation cohort;

9 (4) Degree, diploma, or credential attainment;

10 (5) Enrollment, attendance, and transfers;

11 (6) Medical, health, and mental-health records limited to immunization records
12 required by state law or records required by the Individuals with Disabilities Education
13 Act or section 504 of the Rehabilitation Act;

14 (7) Discipline reports limited to objective information about disciplinary incidents
15 or required to be disclosed to appropriate law enforcement authorities under section
16 160.261 or, for institutions of higher education, objective information sufficient to produce
17 the Title IV Annual Incident Report pursuant to the Clery Act, 20 U.S.C. Section 1092(f);

- 18 **(8) Remediation data;**
- 19 **(9) Special education data limited to data required by the Individuals with**
20 **Disabilities Education Act or section 504 of the Rehabilitation Act;**
- 21 **(10) Demographic data limited to that required by the federal Elementary and**
22 **Secondary Education Act, including race, economic status, disability status, and English**
23 **language proficiency status;**
- 24 **(11) Student workforce information limited to information related to work-study**
25 **programs participated in for academic credit;**
- 26 **(12) Student or family income data limited to data required by law to determine**
27 **eligibility to participate in or receive financial assistance under a program; and**
- 28 **(13) Information about extracurricular activities limited to activities that are**
29 **school-sponsored and engaged in for academic credit.**
- 30 **2. A state agency shall not collect from parents, eligible students, or through data**
31 **sharing agreements with any other entity, any of the following:**
- 32 **(1) Medical information including, but not limited to, height, weight, body mass**
33 **index, and mental health records, except as provided under subdivision (6) of subsection**
34 **1 of this section;**
- 35 **(2) Student or family workforce information, except as provided under subdivision**
36 **(12) of subsection 1 of this section;**
- 37 **(3) Student biometric records;**
- 38 **(4) Any data collected via affective computing, including analysis of facial**
39 **expressions, electroencephalogram brain wave patterns, skin conductance, galvanic skin**
40 **response, heart-rate variability, pulse, blood volume, posture, and eye-tracking;**
- 41 **(5) Any data, including any data resulting from state or national assessments, that**
42 **measure psychological or behavioral resources, mindsets, learning strategies, effortful**
43 **control, attributes, dispositions, social skills, attitudes, or intrapersonal resources;**
- 44 **(6) Any data collected through predictive modeling; and**
- 45 **(7) Information about student or family religious affiliation.**
- 46 **3. No funds, whether from federal Race to the Top grants, American Reinvestment**
47 **and Recovery Act funds, or any other source, shall be used on construction, enhancement,**
48 **or expansion of any data system that does not comply with the provisions of sections**
49 **160.1500 to 160.1545; that is designed to track students beyond their kindergarten through**
50 **twelve or postsecondary education careers or compile their personal, nonacademic**
51 **information; or that evaluates academic programs and student progress.**
- 52 **4. No state agency shall pursue or accept any grant, whether from the federal**
53 **government or any private entity, that would require collecting or reporting any types of**
54 **data in violation of this section.**

160.1506. 1. By June thirtieth annually, state agencies shall publicly and conspicuously disclose on their websites the existence and character of any personally identifiable information from education records maintained by the agencies or education institutions, directly or through contracts with outside parties. By June thirtieth annually, state agencies shall also provide electronic notification of this information to the chairs of the senate education committee, the elementary and secondary education committee of the house of representatives, and the joint committee on education. Such disclosure and electronic notifications shall include all of the following:

(1) The legal authority that authorizes the establishment and existence of the data repository;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The categories of individuals on whom records are maintained in the data repository;

(4) The categories of records maintained in the data repository;

(5) Each expected disclosure of the records contained in the data repository, including the categories of recipients and the purpose of such disclosure;

(6) The policies and practices of the state agency or education institution regarding storage, retrievability, access controls, retention, and disposal of the records;

(7) The title and business address of the official who is responsible for the data repository, and the name and business address of any contractor or other outside party maintaining the data repository for or on behalf of the state agency or education institution;

(8) The procedures whereby parents, eligible students, or teachers can be notified at their request if the data repository contains a record pertaining to that student or teacher; and

(9) The procedures whereby parents, eligible students, or teachers can be notified at their request how to gain access to any record pertaining to that student or teacher contained in the data repository and how they can contest its content.

2. Upon request, parents and eligible students shall be provided a printed copy of their education records that are held in an education database, and they shall have the right to correct those education records in a manner that is consistent with requirements of state and federal law.

3. State agencies shall use only aggregate data in published reports.

160.1509. No state or national student assessment that collects any type of psychological or behavioral data shall be adopted or administered in this state by any school district or charter school. Such psychological or behavioral data include assessment

4 of noncognitive skills or attributes, psychological resources, mindsets, learning strategies,
5 effortful control, attitudes, dispositions, social skills, or other interpersonal or
6 intrapersonal resources.

160.1512. No state agency, school board, or education institution offering grades
2 prekindergarten through twelve shall administer any student survey, assessment, analysis,
3 evaluation, or similar instrument that solicits information about the student or the
4 student's family concerning any of the following:

- 5 (1) Political affiliations or beliefs;
- 6 (2) Mental or psychological problems, psychological resources, mindsets, learning
7 strategies, effortful control, attributes, dispositions, social skills, attitudes, or intrapersonal
8 resources;
- 9 (3) Sexual behavior or attitudes;
- 10 (4) Illegal, antisocial, self-incriminating, or demeaning behavior;
- 11 (5) Critical appraisals of another individual with whom a student has a close family
12 relationship;
- 13 (6) Legally recognized privileged or analogous relationships, such as those with a
14 lawyer, physician, or clergy member;
- 15 (7) Religious practices, affiliations, or beliefs;
- 16 (8) Personal or family firearm ownership; or
- 17 (9) Income or other income-related information except that which is required by
18 law to determine eligibility to participate in or receive financial assistance under a
19 program.

160.1515. 1. Subject to the exceptions contained in sections 160.1500 to 160.1545,
2 access to student education records in the student database shall be restricted to the
3 authorized representatives of the department, state agency, or education institution who
4 require such access to perform their assigned duties. No party may be designated an
5 authorized representative unless that party is an employee of the department, state agency,
6 or education institution and is under the direct control of the department, state agency, or
7 education institution.

8 2. Subject to the exceptions contained in sections 160.1500 to 160.1545, no
9 personally identifiable student or teacher data shall be disclosed without the written
10 consent of the parents for any student under the age of eighteen or eligible students as
11 defined in subsection 2 of section 160.1500.

12 3. The department shall develop and publish criteria for the approval of research-
13 related data requests from state agencies, political subdivisions, local governmental
14 agencies, the general assembly, academic researchers, and the public.

15 **4. Personally identifiable information from an education record of a student shall**
16 **not be released to a party conducting studies for or on behalf of the state agencies or**
17 **education institutions without the written consent of the parent, eligible student, or**
18 **affected teacher, except that such information may be released to such party to develop,**
19 **validate, or administer assessments or administer student-aid programs. Any outside party**
20 **conducting such a study shall meet all the requirements for contractors under subsection**
21 **6 of this section.**

22 **5. In conducting any audit or evaluation of an education program, or any**
23 **compliance or enforcement activity in connection with legal requirements that relate to**
24 **state or district supported education programs, if such audit, evaluation, or activity**
25 **involves access to personally identifiable student data or information, education records**
26 **may be released only to authorized representatives of state agencies, school boards, or**
27 **institutions. No party may be designated an authorized representative unless that party**
28 **is an employee of the department, state agency, or education institution and is under the**
29 **direct control of the department, state agency, or education institution.**

30 **6. State agencies shall not disclose personally identifiable information from**
31 **education records without the written consent of parents or students eighteen years of age**
32 **or older unless formally emancipated to a contractor, consultant, or other party to whom**
33 **the state agency has outsourced institutional services or functions unless that outside party**
34 **meets all of the following requirements:**

35 **(1) Performs an institutional service or function for which the state agency would**
36 **otherwise use its employees;**

37 **(2) Is under the direct control of the state agency with respect to the use and**
38 **maintenance of education records or teacher records;**

39 **(3) Limits internal access to education records to those individuals who require**
40 **access to those records for completion of the contract;**

41 **(4) Does not use the education records for any purposes other than those explicitly**
42 **authorized in the contract;**

43 **(5) Does not disclose any personally identifiable information from education**
44 **records to any other party:**

45 **(a) Without the written consent of the parent for any student under the age of**
46 **eighteen or the student if eighteen years of age or older or formally emancipated; or**

47 **(b) Unless required by statute or court order and the party provides a notice of the**
48 **disclosure to the state agency that provided the information no later than the time the**
49 **information is disclosed, unless providing notice of the disclosure is expressly prohibited**
50 **by the statute or court order;**

51 **(6) Maintains reasonable administrative, technical, and physical safeguards to**
52 **protect the security, confidentiality, and integrity of the personally identifiable student or**
53 **teacher data in its custody;**

54 **(7) Uses encryption technologies to protect data while in motion or in its custody**
55 **from unauthorized disclosure using a technology or methodology specified by the Secretary**
56 **of the United States Department of Health and Human Services in guidance issued under**
57 **section 13402(H)(2) of Public Law 111-5;**

58 **(8) Has sufficient administrative and technical procedures to continuously monitor**
59 **the security of personally identifiable student or teacher data in its custody;**

60 **(9) Conducts a security audit annually and provides the results of that audit to each**
61 **state agency that provides education records or teacher records;**

62 **(10) Provides the state agency with a breach-remediation plan acceptable to the**
63 **state agency before initial receipt of education records;**

64 **(11) Reports all suspected security breaches to the state agency that provided**
65 **education records as soon as possible but not later than forty-eight hours after a suspected**
66 **breach was known or would have been known by exercising reasonable diligence;**

67 **(12) Reports all actual security breaches to the state agency that provided education**
68 **records as soon as possible but not later than twenty-four hours after an actual breach was**
69 **known or would have been known by exercising reasonable diligence;**

70 **(13) In the event of a security breach or unauthorized disclosure of personally**
71 **identifiable information, pays all costs and liabilities incurred by the state agency related**
72 **to the security breach or unauthorized disclosure including, but not limited to, the costs of**
73 **responding to inquiries about the security breach or unauthorized disclosure, of notifying**
74 **subjects of personally identifiable information about the breach, of mitigating the effects**
75 **of the breach for the subjects of the personally identifiable information, and of**
76 **investigating the cause or consequences of the security breach or unauthorized disclosure;**
77 **and**

78 **(14) Destroys or returns to the state agency all personally identifiable information**
79 **in its custody upon request and at the termination of the contract.**

160.1518. In the event of a security breach or unauthorized disclosure of personally
2 **identifiable student data, whether by a state agency or by a third party given access to**
3 **education records under section 160.1515, the state agency shall perform all of the**
4 **following actions:**

5 **(1) Immediately notify any individual whose personally identifiable student data**
6 **may have been affected by the breach or disclosure;**

7 **(2) Report the breach or disclosure to the Family Policy Compliance Office of the**
8 **United States Department of Education; and**

9 **(3) Investigate the causes and consequences of the breach or disclosure.**

10 **160.1521. 1. Personally identifiable information collected by any state agency in**
11 **education records shall not be disclosed to any party for a commercial use including, but**
12 **not limited to, marketing products or services, compilation of lists for sale or rental,**
13 **development of products or services, or creation of individual, household, or group**
14 **profiles.**

15 **2. Any cloud computing service provider performing services for a state agency is**
16 **prohibited from using information from education records, or information relating to a**
17 **student or created by a student through the use of a cloud computing service, for any**
18 **purpose other than providing the cloud computing service to the state agency for**
19 **educational purposes and maintaining the integrity of that specific service. Prohibited**
20 **purposes for processing the information identified in this subsection include, but are not**
21 **limited to, the following:**

22 **(1) Online behavioral advertising;**

23 **(2) Creating or correcting an individual or household profile for advertising,**
24 **marketing, or similar commercial purposes;**

25 **(3) Analyzing information to facilitate the advertising, sale, or marketing of a**
26 **product or service;**

27 **(4) Selling the information for any commercial purpose;**

28 **(5) Disclosing the information to any third party other than a service provider that**
29 **is performing services on behalf of the cloud computing service provider and that is subject**
30 **to all of the privacy and data security restrictions that apply to the cloud computing service**
31 **provider; or**

32 **(6) Any other similar commercial for-profit activity, except that a cloud computing**
33 **service provider may process or monitor student data solely to provide such service to the**
34 **state agency and to maintain the integrity of such service.**

35 **3. Any cloud computing service provider that enters into an agreement to provide**
36 **cloud computing services to a state agency shall certify in writing to that state agency that:**

(1) It shall comply with the terms and conditions set forth in subsection 6 of section
 160.1515;

(2) The state agency maintains ownership of all student data;

(3) The cloud computing service provider shall be responsible for all damages
 associated with a data breach as provided under subdivision (13) of subsection 6 of section
 160.1515; and

(4) The cloud computing service provider shall be subject to civil penalties as
 described in section 160.1545 for any violation of any provision of sections 160.1500 to
 160.1545.

37 **4. Any student data stored by a cloud computing service provider shall be stored**
38 **within the boundaries of the United States.**

160.1524. No student data shall be used for predictive modeling for detecting
2 **behaviors, beliefs, or value systems, or for predicting or forecasting student outcomes.**

160.1527. There shall be no video monitoring of classrooms for any purpose,
2 **including for teacher evaluation, without the approval of the district's school board after**
3 **public hearings and the written consent of the teacher and of the parents of all students in**
4 **the classroom.**

160.1530. Personally identifiable information from education records shall not be
2 **disclosed to any noneducation government agency including, but not limited to, the**
3 **Missouri department of labor and industrial relations, whether within or outside the state,**
4 **or to any party that intends to use or disclose the information or data for the purpose of**
5 **workforce development or economic planning. Data linkages or sharing of data with other**
6 **states without express permission of the individuals affected are prohibited.**

160.1533. Personally identifiable information from education records shall not be
2 **disclosed to any government agency or other entity outside the state, except disclosure in**
3 **any of the following circumstances:**

4 **(1) To an institution attended by a student who has transferred out of state;**

5 **(2) To an out-of-state program in which a student voluntarily participates and for**
6 **which such a data transfer is a condition or requirement of participation; or**

7 **(3) If a student is classified as a "migrant" for federal reporting purposes.**

160.1536. 1. No personally identifiable information from education records may
2 **be disclosed to any federal agency including, but not limited to, the United States**
3 **Department of Education or the United States Department of Labor or their**
4 **representatives, unless all of the following requirements are met:**

5 **(1) Such disclosure is required by the United States Department of Education as**
6 **a condition of receiving a federal education grant;**

7 **(2) The United States Department of Education agrees in writing to use the**
8 **information from the education records or teacher records only to evaluate the program**
9 **or programs funded by the grant;**

10 **(3) The United States Department of Education agrees in writing that the**
11 **information shall not be used for any research beyond that related to evaluation of the**
12 **program or programs funded by the grant, unless the parent, eligible student, or teacher,**
13 **whose information or data shall be used for such evaluation, affirmatively consents in**
14 **writing to that use;**

15 **(4) The United States Department of Education agrees in writing to destroy the**
16 **information or data upon completion of the evaluation of the program or programs for**
17 **which the information or data were compiled; and**

18 **(5) The grant or program in connection with which the information or data are**
19 **required is one explicitly authorized by federal statute or by federal rule properly**
20 **promulgated under the federal Administrative Procedure Act, 5 U.S.C. Section 500, et seq.**

21 **2. If the United States Department of Education requires, as a condition of making**
22 **a federal education grant, that the grant recipient disclose student information under**
23 **circumstances that do not comply with subsection 1 of this section, the grant recipient shall**
24 **obtain written consent from the parents of every student, or from eligible students, whose**
25 **information shall be disclosed.**

26 **3. If the United States Department of Education demands personally identifiable**
27 **student information without the written consent of the affected parents or eligible students,**
28 **the grant recipient shall provide written notification to those parents and eligible students**
29 **of all of the following:**

30 **(1) That the grant recipient has been required to disclose the student's information**
31 **or the teacher's data to the United States Department of Education;**

32 **(2) That neither the grant recipient nor any other entity within the state of Missouri**
33 **shall have control over use or further disclosure of that information or data; and**

34 **(3) The contact information, including the name, telephone number, and email**
35 **address of the United States Department of Education official who demands the disclosure.**

160.1539. State agencies, school boards, and institutions shall not disclose student
2 **or teacher information to any assessment consortium of which the state is a member, or**
3 **company with which the state contracts for development or administration of any**
4 **assessment, unless all of the following actions occur:**

5 **(1) The information is transmitted in nonindividual record format;**

6 **(2) The information is limited to information directly related to the assessment,**
7 **such as a student's grade level and test scores; and**

8 **(3) No psychological or behavioral information of any kind, including that listed**
9 **in section 160.1503, is included as part of the test scores.**

160.1542. An education institution shall destroy and remove from the student
2 **database all education records of a student within five years of the student's graduation**
3 **or withdrawal from that institution, provided that the institution may retain records**
4 **showing dates of attendance, diploma, or degree received and contact information. If a**
5 **student withdraws from an education institution before graduating, the institution shall,**
6 **within one year of the student's withdrawal, destroy and remove from the database all**
7 **education records of that student except records showing dates of attendance. Destruction**

8 shall be compliant with the standards of data destruction identified in the National
9 Institute of Standards and Technology (NIST) special publication 800-88.

10 **160.1545. 1. Each violation of any provision of sections 160.1500 to 160.1545 by an**
2 **organization or entity other than a state agency, a school board, or an institution shall be**
3 **punishable by a civil penalty of up to one thousand dollars. A second violation by the same**
4 **organization or entity involving the education records and privacy of the same student**
5 **shall be punishable by a civil penalty of up to five thousand dollars. Any subsequent**
6 **violation by the same organization or entity involving the education records and privacy**
7 **of the same student shall be punishable by a civil penalty of up to ten thousand dollars.**
8 **Each violation involving a different individual education record or a different individual**
9 **student shall be considered a separate violation for purposes of civil penalties.**

10 **2. The attorney general shall have the authority to enforce compliance with this**
11 **section by investigation and subsequent commencement of a civil action, to seek civil**
12 **penalties for violations of sections 160.1500 to 160.1545, and to seek appropriate injunctive**
13 **relief including, but not limited to, a prohibition on obtaining personally identifiable**
14 **information for an appropriate time period. In carrying out such investigation and in**
15 **maintaining such civil action, the attorney general or any deputy or assistant attorney**
16 **general is authorized to subpoena witnesses, compel their attendance, examine them under**
17 **oath, and require that any books, records, documents, papers, or electronic records**
18 **relevant to the inquiry be turned over for inspection, examination, or audit. Subpoenas**
19 **issued under this subsection may be enforced under the Missouri rules of civil procedure.**

20 **3. Nothing contained in this section shall be construed as creating a private right**
21 **of action against a state agency, a school board, or an institution as defined in 160.1500.**

Section B. Because of the immediate and urgent need to protect Missourians from
2 government intrusion and the immediate need to protect personal privacy and the privacy of
3 student data in Missouri, section A of this act is deemed necessary for the immediate
4 preservation of the public health, welfare, peace, and safety, and is hereby declared to be an
5 emergency act within the meaning of the constitution, and section A of this act shall be in full
6 force and effect upon its passage and approval.

✓